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Franck Landrieve

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35690

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EXAMINER

LAU, TUNG S

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## **DETAILED ACTION**

### ***Notice of Non-Responsive Amendment***

1. Newly submitted amended claims 1-18 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Originally claims 1-16, a portable measuring instrument, particularly for use in sport, transmit from a sensor housing worn by a user relay function from a remote detector worn by a user.

Newly presented claims 1-18, a portable measuring instrument, particularly for use in sport involving at least one rotating wheel a first sensor mounted for measuring at least a rotation parameter of at least one rotating wheel; a primary transmitter for transmitting a measuring signal from the first sensor; a housing provided with attachment means for removably fixing the housing at a location remote from the first sensor; the housing including a primary receiver; and a secondary transmitter; and a display means coupled to the body of a user, wherein the display means including a secondary receiver adapted to receive signals from the secondary transmitter; a processor unit; and a display device for displaying data corresponding to the measurement of the first sensor.

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

For example the cited section contain mutually exclusive characteristics, Original presented claims, a portable measuring instrument, particularly for use in sport, transmit from a sensor housing worn by a user relay function from a remote detector worn by a user. Newly presented claims a portable measuring instrument, particularly for use in sport involving at least one rotating wheel a first sensor mounted for measuring at least a rotation parameter of at least one rotating wheel; a primary transmitter for transmitting a measuring signal from the first sensor; a housing provided with attachment means for removably fixing the housing at a location remote from the first sensor; the housing including a primary receiver; and a secondary transmitter; and a display means coupled to the body of a user, wherein the display means including a secondary receiver adapted to receive signals from the secondary transmitter; a processor unit; and a display device for displaying data corresponding to the measurement of the first sensor.

Species are always the specifically different embodiments. Species (maybe either) independent or related as disclosed (See MPEP 806.04(e) and 806.04(b)) Note: in this case, the species are best illustrated using claims, MPEP 809.02(a) [R-3] ). It is noted that numerous additional embodiments have been disclosed in

the specification. Should Applicant introduce claims directed to additional species or amend the claims to be directed toward species distinct from the elected species, the claims may be subject to further restriction . (See 37 CFR 1.142(b) and MPEP § 821.03.)

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, newly submitted claims and amended claims are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03

In view of the evidence, it would have been a restriction in the first office action in the merits if the newly presented claims (with amended claims) were in the original presentation. Since the above-mentioned amendment appears to be a

bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

### **Contact information**

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tung S. Lau whose telephone number is 571-272-2274. The examiner can normally be reached on M-F 9-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 571-272-2269. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit: 2863

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/Tung S. Lau/  
Tung S. Lau, Art Unit 2863  
Primary Examiner  
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